SBCivil Writ Petition No.1619/1996

Guman Singh & Ors.
V.
State of Rajasthan & Ors.

Date of Order :: 5th May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Mridul Jain, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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A writ in the nature of certiorari is claimed by the petitioner to quash the judgment dated 25.11.1987 passed by Board of Revenue for Rajasthan, Ajmer in Reference No.160/85/TA/Jaisalmer. By judgment impugned learned Board of Revenue accepted the reference made to it by Collector, Jaisalmer under Section 232 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as “the Act of 1955”).

In brief, facts of the case are that the petitioners instituted a suit under Section 88 of the Act of 1955 claiming their tenancy in relation to the land measuring 200 bighas bearing khasra No.305 in village Jhemla, Tehsil Pokaran, District Jaisalmer. The suit preferred by the petitioners was decreed and they were declared as khatedar tenants by the Assistant Collector, Pokaran under a judgment dated 15.5.1981. The Collector, Jaisalmer then made a reference under Section 232 of the Act of 1955 to the Board of Revenue for quashing the judgment dated 15.5.1981. The Board of Revenue by judgment impugned

accepted the reference and set aside the judgment and decree dated 15.5.1981 passed by Assistant Collector, Pokaran in suit No.419/79. The Board of Revenue while accepting the reference held that the trial court decreed the suit in an improper way as the plaintiff did not produce any documentary evidence to prove their possession over the land in dispute and patwari Birmaram who was examined as defendant's witness stated that in samvat 2037 the land recorded in name of Guman Singh was over 40 bighas. The Board also observed that the land which is ordered to be declared under the tenancy of the petitioners was already resumed by the State under ceiling proceedings.

It is pertinent to note here that the petitioners alongwith the writ petition did not choose to file any document except the judgment dated 25.11.1987 passed by the Board of Revenue. The petitioners have also not given the date on which the reference was made by the Collector, Jaisalmer under Section 232 of the Act of 1955.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the land measuring 693 bighas in khasra No.305 of village Jhemla was entered in the name of Jawahar Singh, Hukam Singh and Kan Singh sons of Shri Alsodas Singh Rajput. The land aforesaid was under the cultivatory possession of above named three persons. The land

possessed by those persons was in excess then to the ceiling limits provided for holding agricultural land, therefore, proceedings under Chapter III-B of the Act of 1955 were conducted and the excess land was resumed by the State. The petitioners after resumption of aforesaid land made their claim for tenancy with regard to the land in question. According to the respondents the land was not at all in possession of the petitioners but was a government land being resumed under ceiling proceedings, the Board of Revenue, therefore, did not commit any error in accepting the reference. The Assistant Collector without verifying and considering all these aspects of the matter decreed the suit and declared the petitioners as khatedars of the land in dispute.

Heard counsel for the parties.

From the record available with the counsel for the petitioners I have also perused the judgment passed by the Assistant Collector on 15.5.1981 and the order dated 25.1.1985 passed by the Collector, Jaisalmer making reference to the Board of Revenue. Copies of both the orders are taken on record. From perusal of the judgment dated 15.5.1981 it is clear that the Assistant Collector on basis of oral evidence found the petitioners' possession over the land. There was no documentary evidence available on record to prove possession of the petitioners over the land in

dispute. The Assistant Collector was aware of the fact that the land in dispute was resumed by Government of Rajasthan as a consequence of ceiling proceeding but he did not care to look into the record pertaining to the ceiling proceeding wherein the land by treating under possession of Jawahar Singh, Hukam Singh and Kan Singh was ordered to be resumed.

The Collector, Jaisalmer after considering all relevant facts reached at the conclusion that the petitioners were not in possession of the land and they entered on the part of land measuring 40 bighas as trespassers in samvat 2037. The Collector, Jaisalmer in quite unambiguous terms held that no documentary evidence was available to prove possession of the petitioners over the land in any capacity prior to samvat 2037. It is apparent from the facts of the case that a device was adopted by the petitioners to get the land, which was resumed by the Government under ceiling proceedings, under their tenancy by proving their possession on basis of oral statements. The Assistant Collector should have examined the matter by calling upon and examining the ceiling proceedings also. Merely on basis of oral evidence specially in the circumstances that the land in dispute was already resumed by Government of Rajasthan under ceiling proceedings it was not appropriate for the Assistant Collector to decree the suit. The error committed by the Assistant Collector was rightly

sought to be corrected by the Collector, Jaisalmer by making a reference under Section 232 of the Act of 1955. The Board of Revenue also not committed error in accepting the reference as a specific finding is given that there was no evidence to prove possession of the petitioners over the land and a doubt is created that in fact a device was adopted by way of filing a suit to get back the land resumed under ceiling proceedings.

In view of whatever discussed above, I do not find any error in the judgment impugned which may warrant interference of this Court under Articles 226 and 227 of the Constitution of India. The writ petition, therefore, is dismissed with no order to costs.

(GOVIND MATHUR),J.

kkm/ps.